

NOTE: This Procedures Manual was last updated April 14, 2004. It does not reflect the procedures under the version of local rules which is presently under review. It is anticipated that this procedures manual will be revised upon adoption of new local rules.

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I. Sources of case information

A. General questions about procedure, status of docket entries, orders, or filings, should be directed to the Bankruptcy and District Clerk's Office, at **(713) 250-5112**. Such questions may also be directed to the personnel at the reception counter on the 5th Floor of the Courthouse in Houston.

B. Copies of orders, pleadings, and docket sheets may be purchased from the copy service, at **(713) 236-0903**. Such documents are available at the intake counter, on the first floor of the Courthouse in Houston, and are available on the court's electronic case filing system.

C. Tapes or transcripts of hearings may be ordered from the Electronic Recording Operators, at **(713) 250-5404**. Order forms are available at the ERO office in Room 8016 on the 8th Floor of the Courthouse.

D. Copies of the Local Bankruptcy Rules, Administrative Procedures for Electronic Filing, general orders, standing orders, Judge Clark's calendar, selected suggested forms of order, selected opinions, and the most recent version of this procedure manual may be obtained from the court's web site at <http://www.txs.uscourts.gov>.

E. Information regarding cases may be obtained from the trustee of a particular case, or from the office of the United States Trustee. The telephone numbers for the case trustee, in cases in which there is a trustee, and of the trustee's counsel, if any, is listed on the case docket sheet. In addition, information regarding the Houston office of the United States Trustee (which governs practice in both Houston and Galveston) is available on the U.S. Trustee's web site at <http://www.usdoj.gov/ust/r07/houston.htm>.

II. Contact with court personnel

A. Contact with Judge Clark

Judge Clark does not accept communication concerning a case or court procedure by mail, e-mail, telephone, or fax. Such contact is ex parte contact, prohibited by Bankruptcy Rule 9003.

B. Contact with Judge Clark's Law Clerks

Counsel and the public are not permitted to contact the Law Clerks. At Judge Clark's direction, Law Clerks may contact counsel as the need arises. However, please refrain from engaging the Law Clerk in discussions regarding legal matters which are not the subject of the call. Absent exceptional circumstances, calls from counsel to the Law Clerks will be re-directed to Judge Clark's Case Manager.

C. Contact with Judge Clark's Case Manager

Judge Clark's Case Manager, **Maria Rodriguez**, is the primary contact for matters involving Judge Clark's cases. The Case Manager may be reached by dialing **(713) 250-5410**, or by email addressed to **cmA330@www.txs.uscourts.gov**. If the Case Manager is unavailable, **Tracey Campbell**, the Courtroom Deputy Clerk, can assist with some matters, as directed by the court. The Courtroom Deputy Clerk may be reached by dialing **(713) 250-5772**.

D. Written communications

Do not request action on any case matter or attempt to inform the court of case issues by letter. Any information or requests for relief regarding cases must be set forth in a pleading filed and served as required in the Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure, Bankruptcy Local Rules, and Administrative Procedures for Electronic Filing. When Judge Clark's staff receives a communication regarding a case by letter addressed to Judge Clark, the communication is returned to the sender, with a letter advising the sender that a pleading must be filed as set forth above.

E. Contact with Clerk's Office Personnel other than the Judge's Staff

For general questions, please contact the clerk's switchboard, at **(713) 250-5112**. For assistance with files, intake, or appeals, please contact **Vanna Hulsey**, the Operations Manager for Files, Intake, and Appeals, at **(713) 250-5530**. For assistance with docketing, claims, and closing, please contact **Nathan Ochsner**, the Operations Manager for Docketing, Claims, and Closing, at **(713) 250-5146**.

F. Courtesy Copies

Unless ordered otherwise by the court, whenever a courtesy copy is required under the Bankruptcy Local Rules, the Administrative Procedures for Electronic Filing, or is requested by the court, the courtesy copy should be delivered to the Case Manager.

III. Getting Matters Before the Court

A. Pleadings

Counsel and pro se litigants who wish to obtain relief from the court must first file a pleading setting forth the relief requested. There are several types of pleadings:

1. Motions

A motion is a general request for relief. Most of the types of relief sought in bankruptcy cases are sought by motion.

a. Routine Administration

When a motion (or application) is filed, the motion (along with the proposed form of order the person filing the motion is required to submit pursuant to the Local Rules) goes into the electronic case file maintained by the Clerk. If the motion does not require emergency or expedited treatment, the case manager prints a copy of the proposed form of order, and places it in a "diary" for review by Judge Clark's staff and Judge Clark. Ordinarily, motions are submitted to Judge Clark's Law Clerks 23 days after they are filed. Ordinarily, Judge Clark either issues a ruling or sets a hearing within about 40 days of the date a motion is filed. If a response has been filed, Judge Clark may issue a ruling without a hearing, or may direct the Case Manager to set a hearing. If the motion is properly brought before the court, and the relief requested is unopposed, Judge Clark may grant the relief requested. If Judge Clark has questions regarding the relief requested, or decides that evidence must be adduced, Judge Clark may direct the Case Manager to set a hearing. Unless otherwise stated, a hearing set by the Case Manager is an evidentiary hearing.

b. Emergency and Expedited Motions

If the motion requires emergency or expedited treatment, Judge Clark's Case Manager brings the motion to the attention of the Law Clerks, or in rare circumstances, directly to Judge Clark. The Case Manager usually checks the electronic case

filing system for emergency motions once per day. A party who files an emergency motion should notify the Case Manager that the motion has been filed.

2. Adversary Proceedings

An adversary proceeding is a separate lawsuit within the bankruptcy case. Certain types of matters must be brought as adversary proceedings. An adversary proceeding is initiated by the filing of a complaint. The electronic filing system requires the Plaintiff to use the event code to open an adversary proceeding, rather than the "Complaint" event code in the main bankruptcy case. To open an adversary proceeding, click on "Adversary" in the top navigation bar, and choose the link to "Open an AP Case."

a. Routine Administration

When an adversary complaint is filed, the Case Manager prepares a Scheduling Order. The adversary Scheduling Order sets forth deadlines to file a status report, complete discovery, file any dispositive motions (e.g. motion for default judgment, motion for summary judgment), and file a joint pretrial statement. In addition, the adversary Scheduling Order sets a status conference to determine default, dismissal, or possible settlement, and sets a pretrial conference. The adversary Scheduling Order also sets a trial week. Although the adversary scheduling order designates a trial week, the actual date and time of the trial will ordinarily be set at the pretrial conference.

b. Emergency Matters (including requests for Temporary Restraining Orders)

A request for a temporary restraining order must be made in the form of an adversary proceeding. If emergency consideration is necessary, the Plaintiff must immediately notify the Case Manager.

3. Claim Objections

Claim Objections are filed in the main bankruptcy case. When a Claim Objection is filed, the Case Manager will

prepare a Scheduling Order, setting forth a deadline to file an answer, and setting an initial pretrial hearing on the claim objection. If no defense to the Claim Objection is raised, the claim may be adjudicated at the Initial Hearing on affidavit filed by the objecting party. If a defense is raised, the Case Manager will schedule an evidentiary hearing.

4. Motions for Relief from Stay

Bankruptcy Local Rule 4001 and General Order 2004-4 specify a form of notice, which includes date, time, and location of the Preliminary Hearing. The notice must appear immediately below the title of the motion.

5. Fee Applications in Chapter 13 cases

When a Fee Application is filed in a Chapter 13 case, the Fee Application will be placed into "diary" as if it were a routine motion. If the court has questions regarding the Fee Application, it will ordinarily be set on a date on which the Chapter 13 Trustee has hearings set.

B. Obtaining Hearings

1. Motions (other than motions for relief from stay)

Ordinarily, unopposed motions are not set for hearing, unless Judge Clark determines that a hearing is necessary. Unless otherwise stated by the case manager or in an order setting a hearing, a hearing set by the Case Manager is an evidentiary hearing. If a response is filed, a hearing may be set. Hearings are ordinarily set when there is time available on the court's calendar, as determined by the Case Manager.

2. Adversary Proceedings

The adversary Scheduling Order governs deadlines for joinder, discovery, and dispositive motions, and sets the initial status conference and pretrial hearing. Motions filed within adversary proceedings are typically submitted to chambers and adjudicated without hearing, or set for hearing in the same manner as motions filed in the main bankruptcy case.

3. Claim Objections

The claim objection scheduling order sets a pretrial hearing. At the pretrial hearing, unless the parties consent to an immediate hearing, and there is court time available, Judge Clark will ordinarily set an evidentiary hearing for a later date, and set discovery and other deadlines.

4. Motions for Relief from Stay

When a motion for relief from stay is filed electronically, a hearing date is automatically set. When a motion for relief from stay is filed other than electronically, the Clerk issues a notice of hearing containing the hearing date. Bankruptcy Local Rule 4001 and General Order 2004-4 specify the form of notice, which includes date, time, and location of the Preliminary Hearing.

5. Chapter 11 Disclosure Statement

When a Chapter 11 Disclosure Statement is filed, the Case Manager will prepare an order setting the hearing on the disclosure statement.

6. Motion to use Cash Collateral

Ordinarily, motions to use cash collateral will be submitted to chambers on an expedited basis, and will be set for hearing. However, because the process of submission to chambers depends on the periodic review of the electronic filings by the Case Manager, a movant on a cash collateral motion is urged to notify the Case Manager of the filing of a cash collateral motion.

7. Matters Set With or Without Response

The following matters are set by the Case Manager, whether or not a response is filed: Fee Applications in Chapter 7 and non-complex Chapter 11 cases; Objections to Exemptions; Applications to Pay Filing Fee in Installments.

8. Chapter 13 Confirmation Hearing

Ordinarily, the Chapter 13 Trustee will determine a date for a confirmation hearing, and will provide notice of that date.

IV. Hearings

A. General courtroom demeanor

1. Punctuality

Counsel must be present at the time a hearing is scheduled. Failure to appear is not excused by counsel's having an appearance scheduled in another courtroom in the building at the same time. Counsel must arrive in sufficient time before the hearing to give appropriate identifying information to the Electronic Court Recording Operator.

2. Attendance

The court enforces the Standing Order on Court Appearances, (Standing Order No. 91-11) which requires that counsel must attend all court proceedings involving the interest of the client, or send a fully informed attorney with authority to bind the client, unless excused by the court. Non-payment of fees is not a basis for non-attendance.

3. Avoiding Disruption

If other matters are proceeding in the courtroom, other persons in the courtroom should remain quiet and avoid disrupting the court until their matter is called. Cell phones and other disruptive devices should be turned off.

4. Courtesy to Court's Staff

At times, matters will be called on the record by the Courtroom Deputy Clerk, without the judge in the courtroom. Persons in the courtroom should avoid disruption of matters in the courtroom, as if the judge were present, when the Courtroom Deputy Clerk calls matters on the record.

B. Hearing and Trial Practice

1. Electronic Recording

Hearings are recorded electronically. The Electronic Recording Operator (ERO) prepares a log of the proceedings, which is stored along with the electronic recording. Prior to the start of each hearing, the ERO

will request that any attorneys who intend to make an appearance give the ERO a business card, or fill out an appearance sheet, marked with the name of the party the attorney represents.

2. Appearances by Telephone

a. When permitted

In cases other than Complex Chapter 11 cases, counsel may appear by telephone, only upon the granting of a motion seeking leave to appear by telephone. In Complex Chapter 11 cases, counsel may appear by telephone, upon arrangement with the Case Manager.

b. Connecting to the hearing by telephone

When counsel is permitted to appear by telephone, the counsel appearing by telephone should contact the Case Manager for instructions. Counsel who wish to appear by telephone will be required to dial the designated telephone number several minutes prior to the commencement time for the hearing, in order to allow the caller to give appearance information to the ERO before the hearing commences.

c. Conduct of the hearing

While appearance on the telephone is permitted, Judge Clark will not take evidence over the telephone (including the questioning of witnesses present in the courtroom). In order to make a proper record, counsel appearing by telephone should state the counsel's name each time the counsel speaks.

3. Appearances

When a matter is called, Judge Clark will take appearances. Counsel (or parties, if not represented by counsel) should state their names, and all parties they represent. Do not begin argument until all parties have entered their appearance.

4. Witnesses and Exhibits

Unless otherwise ordered by the court (e.g. scheduling orders on adversary proceedings or claim objections), prior to the commencement of an evidentiary hearing, parties should provide copies of completed witness and exhibit lists to Judge Clark, opposing parties, and the Courtroom Deputy Clerk. Admitted original exhibits will be kept by the Courtroom Deputy Clerk. It is helpful to have a set of copies of the exhibits for Judge Clark, the witness, and opposing parties.

5. Argument

Argument is generally permitted prior to the taking of evidence. Closing argument is rarely permitted.

C. Continuances

Continuances are granted only upon motion, and only for good cause shown. Many motions for continuance are denied. Parties should prepare for a hearing as if a motion for continuance will be denied. If a motion for continuance is filed on an emergency basis, the movant should notify the Case Manager, and, if the Case Manager cannot be reached, the Courtroom Deputy Clerk.

D. Particular matters

1. Motions for Relief from Stay

Preliminary Hearings on Motions for Relief from Stay will ordinarily be called first by the Courtroom Deputy Clerk. When the Courtroom Deputy Clerk calls the matter, the movant and any respondents should make an appearance on the record. The parties may announce agreement, request continuance to a final hearing, or request a hearing before the judge. If an agreement is announced, the parties may present a proposed form of agreed order at the hearing. If the proposed form of agreed order is not approved, the court may deny without prejudice, or may set an evidentiary hearing.

2. Chapter 11 Disclosure Statement

Ordinarily, neither the proponent nor any opponents of a disclosure statement may present evidence. Usually,

a disclosure statement either contains adequate information, or does not.

3. Chapter 11 Confirmation

If the proponent of a Chapter 11 plan anticipates a contested confirmation, the proponent should notify the Case Manager. If the time allotted for a hearing appears to be insufficient in light of the anticipated contest, the matter will ordinarily be called on the record at the time originally set, and will be continued to a time when the court has sufficient time to conduct the hearing.

4. Chapter 13 Confirmation and Dismissal Panels

Chapter 13 Confirmation and Dismissal panels will ordinarily be called first by the Courtroom Deputy Clerk. When the Courtroom Deputy Clerk calls the matter, the Chapter 13 Trustee will announce a recommendation. Unless a party disagrees with the Chapter 13 Trustee's recommendation, the party need not appear on the record. If no party disagrees with the Chapter 13 Trustee's recommendation, the Chapter 13 Trustee will ordinarily submit a proposed form of order, together with a summary for the court's review. If the proposed form of order is not approved, the court will set an evidentiary hearing.

5. Motion for Summary Judgment

Ordinarily, neither the proponent nor any opponents of a motion for summary judgment may present evidence. Usually, no hearing will be set on a motion for summary judgment.

V. Settlement

A. Announcement on the Record

Ordinarily, parties may announce a settlement on the record, at a hearing on the matter being settled. The parties will be notified if a motion to compromise controversy pursuant to Bankruptcy Rule 9019 must be filed.

B. Motion to Compromise Controversy

When a motion to approve a compromise of controversy is required, the motion must be filed in the main case, and be accompanied by a proposed order in the main case and by a proposed final judgment in the adversary proceeding, if any.

C. Submission of Agreed Orders After Hearings

A party should not submit an agreed form of order unless there is a predicate in the record, either in the form of an announcement of settlement, or a filed motion to compromise. However, a party may submit an agreed form of order prior to a hearing, and then appear at the hearing to announce the settlement.

VI. Chapter 13 Fee Applications

A. Fixed Fee Arrangements

The court has authorized the filing, at the commencement of the case, of fixed fee arrangements. The requirements for use of the fixed fee arrangement are set forth in General Order 2004-5. Counsel should anticipate that approval will be denied as to any fixed fee arrangement which does not meet the requirements set forth in General Order 2004-5.

B. Traditional Fee Applications

General Order 2004-5 sets forth a format for the filing of fee applications in Chapter 13 cases other than those governed by the fixed fee arrangement provisions. The format described in General Order 2004-5 supersedes this court's opinion in In re Wilson, Case No. 02-41399-H3-13.

VII. Motions for Relief from Stay

A. Content

The content of motions for relief from stay is governed by Bankruptcy Local Rule 4001 and General Order 2004-4. If the motion requests relief from stay in order to seek foreclosure of real property, the motion must contain a description of the real property.

B. Proposed Form of Agreed or Default Order

A proposed form of agreed or default order on a motion for relief must contain movant's signed representation (individually or by counsel) that movant has complied with Bankruptcy Local Rule 4001. If the motion requests relief from stay in order to seek foreclosure of real property, the order must contain a description of the real property which matches the description in the motion.

VIII. Avoid Common Errors

- A. Sign and date pleadings.
- B. Attach proposed forms of order.
- C. A proposed form of order should contain designated spaces for the judge to sign and date the order, with sufficient space to do so.
- D. Remember to include all attachments to documents electronically filed, such as exhibits to motions and fee applications, and proposed forms of order.
- E. Include property descriptions in Section 362 motions seeking relief from stay in order to foreclose on real property and matching property descriptions in proposed forms of order.
- F. Include a budget in cash collateral motions.
- G. Place the signed representation of compliance with BLR 4001 in a place in which it is clear that it is a signed representation of the party, rather than a finding made by the judge.
- H. Avoid unnecessary findings in a proposed form of order.
- I. Avoid overreaching in a proposed form of order (e.g. orders on motions for relief from stay should not grant affirmative relief such as approving repossession and sale of collateral).
- J. A proposed form of order should include a dispositive ruling on the motion.
- K. Make sure certificates of service are complete, and include a list of parties served.
- L. Presume a hearing will go forward, until a continuance has been granted.
- M. Show up for hearings, on time and prepared.
- N. If a motion has been denied without prejudice, file a new motion or a motion for reconsideration. The motion denied without prejudice is no longer pending.
- O. Do not submit a proposed form of order without a motion.
- P. When required, deliver courtesy copies to the Case Manager.